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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA  
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9 JOSE ALFREDO SUAREZ, Case No. 1:22-cv-00160-JLT-SAB (PC)  
10 Plaintiff,  
11 v.  
12 KEN CLARK, et al., ORDER DENYING PLAINTIFF'S SECOND  
13 Defendants. MOTION FOR APPOINTMENT OF  
COUNSEL  
(ECF No. 49)

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15 Plaintiff Jose Alfredo Suarez is proceeding pro se and in forma pauperis in this civil  
16 rights action filed pursuant to 42 U.S.C. § 1983.

17 Currently before the Court is Plaintiff's second motion for appointment of counsel, filed  
18 March 6, 2023. In seeking appointment of counsel, Plaintiff submits: (1) he is unable to afford  
19 counsel; (2) his imprisonment limits his ability to litigate the action; (3) he has limited access to  
20 the law library; (4) a trial will likely involve conflicting testimony; (5) he has limited knowledge  
21 of the law; (6) he has made repeated efforts to obtain counsel; and (7) he has presented a  
22 likelihood of success on the merits.

23 There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113  
24 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to represent plaintiff  
25 pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern  
26 District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the  
27 Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113  
28 F.3d at 1525.

1       Without a reasonable method of securing and compensating counsel, the Court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success  
4 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
5 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

6       In the present case, the Court does not find the required exceptional circumstances. Even  
7 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
8 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with  
9 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to  
10 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the  
11 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most  
12 actions require development of further facts during litigation and a pro se litigant will seldom be  
13 in a position to investigate easily the facts necessary to support the case.”) The test is whether  
14 exception circumstances exist and here, they do not. Although the Court found that Plaintiff has  
15 stated cognizable claims to proceed with the action, at this early stage of the litigation, the Court  
16 cannot find Plaintiff is likely to succeed on the merits. In addition, circumstances common to  
17 most prisoners, such as lack of legal education and limited law library access, do not establish  
18 exceptional circumstances that would warrant a request for voluntary assistance of counsel.  
19 Finally, based on a review of the record, including Plaintiff’s instant motion, the Court that  
20 Plaintiff is able to clearly articulate his claims and able to adequately litigate this action.  
21 Accordingly, Plaintiff’s second motion for the appointment of counsel is denied, without  
22 prejudice.

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24 IT IS SO ORDERED.

25 Dated: March 7, 2023

  
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UNITED STATES MAGISTRATE JUDGE

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